IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6857 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HANIFBHAI BAPUBHAI DASADIA

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 6857 of 2001

MR TR MISHRA for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/03/2002

ORAL JUDGEMENT

#. Heard Mr.T.R.Mishra, learned advocate appearing on behalf of the petitioner and Mr.M.J.Shelat for Mr.A.M. Dagali, learned advocate for respondent - Corporation.

Rule. Mr.M.J.Shelat, learned advocate for Mr.A.M.Dagali waives formal service of Rule on behalf of the respondent Corporation.

#. The grievance of the present petitioner is that he has been reinstated in pursuance of the settlement arrived at between the parties in Reference No.363 / 1990 before the labour court, Bhavnagar on 7th May, 2000. Accordingly, the petitioner has been reinstated in service vide order dated 26th July, 2000 on same post on which he was working but pay scale granted to the petitioner workman as if to the fresh employee against the terms of the settlement and it was not an intention of the settlement. The settlement is arrived at to reinstate the petitioner on his original post with continuity of service without increments. The petitioner has not been granted continuity of service and no notional incremental benefit is granted and thereby proper pay fixation is not granted in case of the petitioner. However, it is also contended by Mr.Mishra that in similar case and in similarly settlement, similarly situated employee was granted correct fixation and the petitioner is discriminated by misinterpretation which has given rise to filing of this petition. Settlement recorded by the labour court on 7th May, 2000 is produced by the petitioner at Annexure-B pg.17 of this petition. In pursuance of the said settlement, the Divisional Controller, Bhavnagar has issued office order dated 14th February, 2001, wherein the petitioner has been reinstated with continuity of service and his pay fixation has been carried out in pursuance of the settlement dated 21st December, 1989 and necessary increment has been given with effect from 1st August, 1992 and 1st August, 1997. But his fixation for interim period for which he remained out of job, no notional increment has been included in the fixation and therefore, pay fixation of the petitioner which has been carried out by the respondent Corporation is not according to the Service Rules of the Corporation. Learned advocate Mr.T.R.Mishra on behalf of the petitioner workman has relied on decision rendered by Andhra Pradesh High Court in case of T. Narayana v. Managing Director, APSRTC Hyderabad and others reported in 1998 II CLR 982 and also relied on other decisions of the Andhra Pradesh High Court in case of Managing Director, APSRTC, Hyderabad and other v. M. Sankarraiah reported in 1999 II CLR 597 and P. Srinivas vs. Industrial Turbinal cum Labour Court, Warangal and others reported in 2000 LLR 814.

#. Relying on the aforesaid decisions, learned advocate Mr.T.R.Mishra has submitted that continuity of service has been granted in the settlement while giving reinstatement to the petitioner and therefore, the petitioner is entitled in pay fixation the notional increments of interim period during he remained out of job. However, it is case of the petitioner that said benefit of notional increment has not been given by the respondent to the petitioner, which has given rise to this petition.

#. Learned advocate Mr.M.J.Shelat appearing on behalf of the respondent has submitted that according to the terms of the settlement, as per item No.3 dated 7th May, 2000, whereby it is already agreed between the parties to the effect that as per the settlement the petitioner will be reinstated by the respondent and for interim period, no backwages will be paid to the petitioner and for that period, no increment will be given to the workman by the respondent workman. However, in para - 4 of the very settlement, it is made clear by the respondent Corporation that if the petitioner workman is reinstated with continuity of service, then for the in between period, whatever settlement arrived by the Corporation with the recognised union, benefit of said settlement of pay fixation will be given to the petitioner but for the interim period, no backwages nor any increment will be paid to the petitioner. Learned advocate Mr.Shelat for respondent has submitted that in pursuance of the said settlement, the Divisional Controller, Bhavnagar has issued reinstatement order being No.42 / 2001 dated 14th February, 2001 whereby the Division Controller has passed the order granting reinstatement with continuity of service and in between whatever settlement arrived at between the Corporation and the recognised Union, the petitioner is made entitled to pay fixation accordingly but it is stated that the petitioner workman will not entitled to any backwages of the interim period as well as no any increment and accordingly, pay fixation has been carried out by the respondent as per the settlement arrived at between the Corporation and the recognised Union and pay has been fixed by the respondent Corporation. Therefore, according to learned advocate Mr.Shelat, no error has been committed by the respondent Corporation while fixing the salary of the petitioner because the petitioner is not entitled to any increment of the interim period, for which, he remained out of job.

#. I have considered submissions made by the learned advocates for the parties. Condition prescribed in item

No. [3] of the settlement relied on by learned advocate Mr.Shelat says that for interim period, no increment will be given to the petitioner, meaning thereby, even in fixation also, the petitioner is not entitled to any increment either notionally or actually and therefore, fixation which has been carried out by the respondent is correct. This submission cannot be accepted for simple reason that it is not specifically concluded in the settlement in question that even the petitioner is not entitled to notional increment while giving fixation in the scale when continuity of service has been granted to the petitioner. The condition that no increment will be given suggest that actual increment will not be given to the petitioner but it is settled position that while fixing the salary of the petitioner when continuity of service has been granted, then the petitioner is entitled to notional increment in fixation of his salary especially when continuity of service has been granted by the respondent Corporation. Such view has been taken by the Andhra Pradesh High Court in three decisions referred to above. Andhra Pradesh High Court in case of T. Narayana v. Managing Director, APSRTC Hyderabad and others reported in 1998 II CLR 982 has observed that reinstatement with continuity of service, effect of grant of, whenever workman is ordered by Labour Court to be reinstate with continuity of service, wage payable to him on reinstatement should fixed after taking into account periodical increments that would have been earned by him had he been in service during out of employment period. Similar view has been taken by the very High Court in case of in case of Managing Director, APSRTC, Hyderabad and other v. M. Sankarraiah reported in 1999 II CLR 597, wherein the Andhra Pradesh High Court has observed that when reinstatement has been granted, benefit of notional increments must have to be given while drawing the fixation. The labour court has ordered reinstatement of workman with continuity of service but without backwages and other attendant benefits, he is entitled to benefit of notional increments for cut off employment period. Benefit of continuity of service cannot be restricted only to computation of seniority or for pensionary benefits. Fixation of his salary after reinstatement has to be done by taking into account periodical increments that would have been earned by him had he been in service during cut off employment period. The Andhra Pradesh High Court in case of P. Srinivas vs. Industrial Turbinal cum Labour Court, Warangal and others reported in 2000 LLR 814 has observed that notional increments are to be taken into account for fixation. In the facts of the case before the Court, on reinstatement APSRTC fixed his wages without taking into account,

notional increments the conductor could have earned had he been in continues service, held to be not legal but it has been held that APSRTC cannot deny notional increments on the ground of delay on the part of the workman in approaching the Court, when the reinstatement granted with continuity of service.

#. Learned advocate Mr.Shelat on behalf of the respondent Corporation has also submitted that the condition that no increment will be given for interim period which also includes notional increment and therefore also, no such notional increment will be entitled by the petitioner while drawing fixation and therefore, naturally the net effect would be that the petitioner has to be considered as fresh employee so far it relates to salary. Considering the contention raised on behalf of the respondent, in view of this Court, if notional increment is not included in fixation of the salary, then salary will have to be fixed as if the petitioner workman has been reinstated as fresh employee but in the instant case, it was not the intention in the settlement arrived between the parties. If submission raised by Mr.Shelat, learned advocate for respondent is accepted, same would adversely affect the right of the petitioner workman and the petitioner will not be entitled to either notional or actual increment and his salary will have to be fixed from initial stage drawn by the workman at the time of his dismissal. But perusal of the settlement in question involved in the matter, does not transpires any such intention especially when the petitioner workman has been granted reinstatement with continuity of service. Therefore, contention of the respondent is not well founded and not worth acceptance.

#. In view of above observations of the Andhra Pradesh High Court and considering the terms set out in the said settlement in question that for interim period, no increments will be given, meaning thereby, the petitioner is not entitled actual increments but while drawing fixation, such notional increment cannot be denied, otherwise, it will have adverse consequence in the salary especially when benefit of continuity of service is granted in favour of workman. Grant of benefit of continuity of service impliedly includes benefit of notional increment and therefore, such notional increment has to be taken into account while fixing the salary, otherwise, there is no meaning of grant of continuity of service for the purpose of fixation of salary. Therefore, in above view of the matter, according to my opinion, the petitioner is entitled to notional increment

for interim period. Therefore, it is directed to the respondent Corporation to fix the salary of the petitioner while considering the notional increment for interim period and thereafter, considering the benefits of the settlement, to fix the salary and pay difference of salary within period of three months from the date of receiving the copy of this order.

In view of above discussion and directions given by this Court, present petition is disposed of accordingly. Rule is made absolute accordingly. No order as to cost. Direct Service to respondent is permitted.

Date : 19-3-2002 [H.K.Rathod, J.]

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